

Memorandum

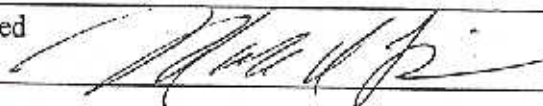
TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Stephen M. Haase
Larry D. Lisenbee

SUBJECT: SEE BELOW

DATE: May 18, 2005

Approved



Date

May 20, 2005

COUNCIL DISTRICT: Citywide

SUBJECT: SANTA CLARA VALLEY HABITAT CONSERVATION PLAN/NATURAL
COMMUNITY CONSERVATION PLAN (HCP/NCCP) DRAFT WORK
PROGRAM AND BUDGET MEMO

REASON FOR THE ADDENDUM

This item is linked with the funding for the Coyote Valley Specific Plan and could not proceed pending the donation of funds from the Coyote Housing Group (CHG). The other three Local Partners for the HCP/NCCP have already accepted the work program and are waiting for San Jose to accept the Draft Work Program.

RECOMMENDATION

1. Accept the draft HCP/NCCP work program (Exhibit 1)
2. Accept the budget and cost share principles, identified source of funds and approve allocation of funds for FY "05-06" (Exhibits 2 and 3)
3. Accept the Coyote Housing Group Donation Agreement
4. Adopt the following Appropriation Ordinance and Funding Source Resolution Amendments in the General Fund as follows:
 - a. Increase the City-wide appropriation for the Coyote Valley Specific Plan by \$400,000 for the City's participation in the Santa Clara Valley HCP/NCCP.
 - b. Increase earned revenue from Other Revenue by \$400,000

BACKGROUND

The Santa Clara Valley Habitat Conservation Plan (HCP) and Natural Community Conservation Plan (NCCP) is a joint effort of the City of San Jose, Santa Clara Valley Water District, Santa Clara Valley Transportation Authority and the County of Santa Clara collectively known as the "Local Partners".

On June 29, 2004, the Council approved a Memorandum of Understanding (MOU) and found that the terms and institution framework of the MOU implemented the City's commitment to prepare a regional conservation plan. The MOU requires the governing bodies of each local Partner to approve a work program for Plan preparation, a cost share arrangement for Plan preparation and an annual budget. This step also helps to fulfill the City's June 2001 commitment to the U.S. Fish and Wildlife Service to cooperatively develop a Countywide HCP/NCCP.

In a letter of Formal Endangered Species Consultation issued on July 31, 2001, the City of San Jose (City), Valley Transportation Authority (VTA), County of Santa Clara (County), and Santa Clara Valley Water District (SCVWD) were identified to provide individual financial commitments to assist with the development of a regional Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP) to support the United States Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG) in efforts to conserve federally and State listed species in the City of San Jose and in portions of the County of Santa Clara. The City, County, and SCVWD individually acknowledged and accepted their commitments to the HCP/NCCP efforts in letters dated June 25th and 27th, 2001.

The MOU by and among the Local Partners has been executed in connection with the proposed preparation of an HCP/NCCP for the area generally delineated as southern Santa Clara County, including the Coyote Valley area. The purpose of the MOU is to establish a program by which participants in the development and implementation of the HCP/NCCP may be coordinated in order to encourage consistent and compatible findings.

Since the MOU was approved, staff from the four Local Partners have met regularly and developed a draft work program. Staff also has established regular meetings with representatives from various state and federal resource agencies. A draft Planning Agreement has been prepared which establishes the relationship and expectations between the Local Partners and resource agencies for Plan preparation. In accordance with state law, the California Department of Fish and Game (CDFG) issued the Planning Agreement for public review and comment. Staff will bring the Planning Agreement to the Council for approval after any necessary modifications as a result of the public review period.

ANALYSIS

The MOU states that the respective Governing bodies need to approve a work program. The draft work program is highlighted in *Exhibit 1*. On behalf of the Local Partners, the Santa Clara Valley Water District provided funding for the preparation of a draft work program for the HCP/NCCP.

The draft work program includes an initial set of tasks, schedule and budget necessary to prepare a draft HCP/NCCP. The work program and cost estimates remain a work in progress and represent the best estimates at this point in time. Local Partner staff, state and federal resource agencies staff and the Governing Body Liaison team reviewed the draft work program. The cost estimates in the work program are estimates for consultant(s) costs for tasks and materials not supplied by the partner agencies for the preparation of the HCP/NCCP.

The draft work program was used in the "lead" HCP/NCCP consultant selection process. A Request for Qualifications was issued by the Local Partners to identify interested and qualified consultants to help prepare the HCP/NCCP. Qualified consultants were interviewed and the top three candidates submitted a response to an RFP. The three finalists were interviewed and the firm of Jones and Stokes was selected as the lead consultant for this HCP/NCCP. It is anticipated that they will be under contract with the County by July of this year.

The MOU states that each Governing Body Partner will annually review and approve a budget for the preparation of the Plan and that costs will be equitably shared among the Local Partners. In accordance with MOU provisions for equitably sharing of plan preparation costs, a set of cost share principles was drafted and are attached as *Exhibit 2*. The spread of the costs among the Local Partners is shown on *Exhibit 3*.

The City is committed to cooperatively participating in the preparation of a Countywide HCP/NCCP, which will provide for the mutually agreed upon long-term protection of ecosystems and biodiversity within Santa Clara County, while providing for the continued economic health of the region. Preparation of an HCP/NCCP will generate difficult policy questions and issues regarding growth management, and economic and other considerations associated with the protection, acquisition and management of habitat preserve areas into perpetuity. The establishment of a formal framework between Local Partners will greatly assist in working with the regulatory agencies.

The goal of the HCP/NCCP is to provide a program to facilitate habitat conservation efforts throughout the County, which will streamline the process for development and other covered activities. The first phase of the HCP/NCCP will focus on those areas subject to the highest anticipated development pressure, the Coyote and Uvas/Llagas watersheds. Sub-area HCPs, such as the one currently under development in support of the Fisheries and Aquatic Habitat Collaborative Agreement (FACHE), will be one of the primary mechanisms for the implementation of the countywide plan. The sub-area plans of the Countywide HCP/NCCP will be designed to provide mutual reinforcement for one another. This approach will enable the City and other Partners to prioritize areas that face more urgent needs while developing a program that assists in providing a mechanism for habitat protection and preservation.

As identified in the MOU and the draft Planning Agreement, the potential benefits of the preparation and implementation of the HCP/NCCP include the following:

Allow appropriate compatible growth and development to the extent consistent with applicable laws:

- Provide a basis for permits and authorizations necessary to lawfully take species listed as threatened or endangered pursuant to Federal Endangered Species Act (FESA) and/or the California Endangered Species Act (CESA);
- Provide a process for issuance of take authorizations for Covered Species that are not currently listed but that may be listed in the future without imposing additional mitigation requirements not provided in the approved Plan;

- Provide a comprehensive means to coordinate and standardize mitigation and compensation requirements of Federal Endangered Species Act, National Environmental Protection Act, California Environmental Quality Act, Natural Community Conservation Planning Act and other applicable laws and regulations relating to biological and natural resources within the Planning Area so that public and private actions will be governed equally and consistently, thus reducing delays, expenses and regulatory duplication;
- Provide a less costly, more efficient project review process which results in greater conservation values than the current project-by-project, species-by-species review and regulatory regime; and
- Provide take authority for covered activities related to the need for uninterrupted water supply, flood protection and watershed activities to the extent consistent with applicable laws.

In addition to the joint interests, the City has specific interests, which include:

- Facilitating the implementation of the City's adopted San Jose 2020 General and its Goals and Policies, and
- Development of a realistic and pragmatic conservation plan that can be implemented, which is legally adequate and scientifically defensible.

PUBLIC OUTREACH

The HCP/NCCP has the potential to affect the interests of many members of the public. State regulations require the plan preparation to be an open process with comprehensive public participation and community education. Accordingly, a draft public involvement plan is being prepared by the Local Partners for use during the HCP/NCCP process. A wide range of relevant interests will be represented on a Stakeholder Group. A web site is being sponsored by the County and is located at <http://hcp.sccgov.org>. The web site will be used to post timely information and notification for the plan preparation process.

OUTCOMES

This memorandum provides an opportunity for the Council to take action on the proposed draft work plan for the Santa Clara Valley HCP/NCCP, budget and cost share principles, and donation agreement with CHG as the initial funding source. The contribution of \$400,000 will be used for City staff and consultant costs for the preparation of the Santa Clara Valley HCP/NCCP. This amount is sufficient to fulfill the City's participation in the HCP/NCCP effort for roughly three fiscal years.

COORDINATION

The preparation of this memo has been coordinated with the City Attorney's Office and the other three Local Partners for the HCP/NCCP; Santa Clara County, SCVWD and VTA. The other Local

Partners have all previously accepted the same recommendations for the work plan and funding principles.

COST IMPLICATIONS

The development of the HCP/NCCP constitutes a multi-year effort and commitment. The MOU includes a commitment that the Local Partners will annually appropriate, or otherwise budget for, the Local Partner's contribution to the HCP/NCCP effort. At the time the MOU was approved, the total cost estimate for Plan preparation was \$6 million over a three to five year term, to be shared equitably among the Local Partners. Based on the revised work plan, the current cost estimate for Plan preparation is \$2.66 million over the same three to five year period. Cost components include approximately \$2.2 million for consultants to prepare the Plan and \$400,000 for a project manager.

The Local Partners have received two grants to help fund Plan preparation to date. A third grant application is being prepared for submittal. The Local Partners agreed that the Partner that incurs the cost of applying and administering a grant be allowed up to 10% of the grant funds to cover their administrative costs. The County of Santa Clara has been the lead on the grant applications and administration on behalf of the Local Partners. The balance of the grant funds would be applied to the total project cost for all the partners. A local match is required for these grants. The City's financial participation can be in the form of "in-kind" labor, contract services or cash. The partnership will apply for additional grants as available and appropriate.


Staff of the Local Partners recommends the residual costs (total cost minus grants) be spread equitably among the Local Partners with each paying 25% of the residual cost. Due to plan preparation work flow issues; the costs will not necessarily be the same each year. The average annual contribution from the City for consultants is estimated to be \$133,726. This Plan preparation estimate does not include the cost for environmental review, plan implementation and the cost of staff time to support the consultant's efforts.

The Local Partners met on May 17, 2005 with representatives from Gilroy and Morgan Hill to explain the details of the HCP/NCCP and to determine their interest in participating in the effort. The addition of Morgan Hill and Gilroy would reduce the total costs to each of the Local Partners by approximately \$50,000 to 100,000 each. It appears that Gilroy is interested in proceeding and discussions will continue. Morgan Hill is considering the options. A deadline of October 1, 2005 was given so that the consultant can proceed on the HCP/NCCP preparation with minimal delays.

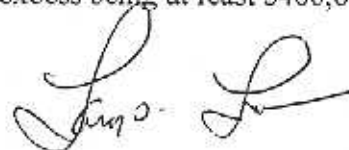
The initial identified funding source is the Coyote Housing Group, LLP. A Donation Agreement is being prepared that documents the use of funds from CHG for the City to prepare the HCP/NCCP. The Coyote Valley Specific Plan project area is located within the HCP/NCCP project boundaries. The contribution of \$400,000 will be used for City staff and consultant costs for the preparation of the Santa Clara Valley HCP/NCCP. This amount is sufficient to fulfill the City's participation in the HCP/NCCP effort for roughly three fiscal years. At the time the MOU was approved by the City Council, staff identified that a balance was anticipated to remain in the out years of the HCP/NCCP preparation. Staff will be identifying potential sources of funding to complete the plan preparation for Council consideration prior to the depletion of CHG funding.

CEQA

Not a project.


STEPHEN M. HAASE, DIRECTOR
Planning, Building and Code Enforcement
LARRY D. LISENBEE
Budget Director

I hereby certify that there will be available for appropriation in the General Fund moneys in excess of those heretofore appropriated therefrom, said excess being at least \$400,000.


LARRY D. LISENBEE
Budget Director

ATTACHMENTS:

- Exhibit 1 - Santa Clara Valley HCP/NCCP Work Program
- Exhibit 2 - Santa Clara Valley HCP/NCCP Cost Share Principles
- Exhibit 3 - Santa Clara Valley HCP/NCCP Cost Spread Between Local Partners

C: Kerry Williams, President, Coyote Housing Group
Ken Schreiber, Program Manager, Santa Clara Valley HCP/NCCP

Exhibit 1

Santa Clara Valley Habitat Conservation and Natural Community Conservation Plan Work Program (Fall 2004)

There are nine major work tasks identified in the MACTEC work program. Tasks associated with NEPA/CEQA and regulatory permitting (8 and 9) have been identified, but not developed in detail or cost estimated in the draft work program.

1. Project Management, cost estimate is \$136,000

This task consists of the facilitation and orchestration of regular (monthly) meetings between the Local Partners and the resource agencies during the duration of HCP/NCCP development. It also includes the establishment of a process to include independent scientific input as required by state law. The independent advisors will help assure that the SCV HCP/NCCP is based on appropriate and valid scientific techniques and principles.

2. Public Involvement & Process, cost estimate is \$268,000

This task assumes that public announcements and informational materials will be distributed through a variety of media that may include a Santa Clara Valley HCP/NCCP website, mailings, advertisements, brochures, and newsletters. Scoping for this task assumes material and distribution costs, oversight, and administration. Public involvement will work to establish a public education program early in the plan development process, facilitate involvement of the state government and Federal agencies with the stakeholders, identify incentives for the signatory parties to make the long and difficult process worthwhile, and establish financial responsibility of the involved parties early in the process.

3. Database Development, cost estimate is \$1,200,000

The purpose of this task is to gather sufficient information to identify the potential impacts to covered species that are likely to result in incidental take. A spatial database is necessary to provide for the efficient storage and dissemination of information collected throughout the course of the HCP/NCCP process. Establishing a database early assures a coordinated approach to subsequent aspects of data collection. This task also includes the compilation of the various activities to be covered by the HCP/NCCP, as well as species and natural community gap analysis and data collection.

The backbone of the HCP/NCCP is the list of special status species and communities in the plan area. Preparing an acceptable HCP/NCCP requires use of this information and the availability of up-to-date biological information on the species being considered within the plan area. Research efforts on behalf of an HCP/NCCP should be confined to study types with a direct bearing on the needs of the plan, such as distribution studies. Additional distribution studies may not be necessary for habitat-based HCP/NCCP in which the presence of a particular species is assumed based on the presence of its habitat type and the habitat type then addressed in the plan and included in the mitigation program.

4. Identify Goals & Objectives, cost estimate is \$228,000

Conservation, protection, enhancement, or restoration measures that are incorporated into regional HCP/NCCPs can provide a means of protection and contribute to recovery of species and natural communities to the extent that, individually or collectively, they provide for dependable conservation actions and long-term biological protections. Scoping for this task assumes that partnering agency staff, regulatory agency staff, and/or consultants have expertise in identifying protective actions. This task culminates in the preparation of a draft adaptive management plan.

5. Economic Analysis, cost estimate is \$150,000

A financial analysis will compare costs of alternative options for preserve sites, and the associated land acquisition, management, administrative, and community costs. Experts in the financial aspects of land use planning may facilitate completion of this task. Determining implementation cost may be best looked at in three phases: preparation, review, and adoption. Principal members from the Local Partners will oversee the cost analysis process. This task may also require experts in facilitation and consensus building.

6. HCP/NCCP Development, cost estimate is \$145,000

The end product for this task will be the draft HCP/NCCP that will be made available for public review and comment. Using data and resources compiled in the course of Project Management, Public Involvement, Data Collection, Conservation Goal Setting, and Economic Analysis, a combined HCP/NCCP outline, draft, and final will be developed in cooperation with regulatory agencies. Scoping for this task and associated subtasks assumes that partnering agency staff, regulatory agency staff, and/or consultants have expertise in writing a combined HCP/NCCP.

7. Prepare Implementation Agreement, cost estimate is \$42,000

HCP/NCCP participants commit to implementing the NCCP by preparing and signing an Implementation Agreement (IA). The IA defines the obligations of the signatories and other parties, provides legally binding and enforceable assurances that the plan will be implemented and adequately funded, and determines a process for amendment of the plan. Implementation agreements may require the formation of a Joint Powers Authority (JPA) and are recommended for regional or other large-scale HCPs that address significant portions of a species range or involve numerous activities or landowners, for HCPs with long-term mitigation and monitoring programs, or where habitat protection programs are complicated or have other special features.

8. NEPA/CEQA, no cost estimate

NCCPs shall provide for appropriate compliance with CEQA as required by 2825(b) of the Fish and Game Code and, to the extent applicable, with the National Environmental Policy Act (NEPA). This work plan does not include tasks or cost estimates associated with NEPA/CEQA documentation, however Environmental Impact Report (EIR) and Environmental Impact Statement (EIS) scoping should begin concurrent with HCP/NCCP development.

9. Obtain Regulatory Permits, no cost estimate

This work plan does not include tasks or cost estimates associated with regulatory permitting; however, there are permits, in addition to the federal and State Incidental Take Permits specifically covered by an HCP/NCCP, which may be considered during the HCP/NCCP process.

Exhibit 2

Santa Clara Valley Habitat Conservation and Natural Community Conservation Plan Cost Share Principles (Fall 2004)

1. Grants to fund plan preparation can be jointly and individually pursued and funds received should reduce costs of Plan preparation for all partners in equal amounts.
 - a. The Partner managing a grant on behalf of the Partnership may receive up to 10 percent of the grant amount for documented administrative costs.
 - b. Partners will report associated costs for time and materials for Plan preparation to the Partnership for in-kind reporting.
2. All Partners will provide sufficient staff to support the Plan preparation process and will provide at no cost to the HCP/NCCP project information and materials developed for other projects, which will help to defray costs of Plan preparation.
3. Costs for Plan preparation, not supported by any grant funding and not part of supportive staff activities shall be split among the four Partners on an equal 25 percent share of the costs.
 - a. Supportive staff is defined as all staff efforts associated with Plan preparation except the cost of a program manager and any staff effort that the Partnership agrees will be done through "contracting in".
 - b. "Contracting-in" is defined as a task identified in the MACTEC work plan and provided by a staff member from a Partner organization as opposed to a consultant. Any partner may contract-in to undertake tasks within the HCP/NCCP work program if agreed to by the Partnership management team.
 - c. Commencing with fiscal year 2005, the management team will prepare a total project estimate and the per partner share. Each Fiscal Year allocation will be attached to this document.
 - d. From year to year, the need for consultant funds will vary depending upon the progress of the project and the timing of consultant contracts.
4. If additional partners are added to the project a modification to the MOU will be required and a modification to the 25 percent cost share will be recommended.
5. Separate cost share agreements will be approved by the Governing Bodies for Plan Implementation.
 - a. Partners will pursue the concept of reimbursement of Plan preparation as part of Plan implementation. If cost reimbursement is paid by those projects or activities benefiting from the Plan, then the funds received shall be shared with all Partners in proportion to the percentage contributed to plan preparation.

Exhibit 3

HCP/NCCP Program Cost Sharing						
HCP/NCCP FY Costs	Previous (actual)	FY 04/05 (estimated)	FY 05/06 (estimated)	FY 06/07 (estimated)	FY 07/08 (estimated)	TOTAL (estimated)
	\$60,000	\$893,333	\$833,333	\$533,334	\$400,000	\$2,660,000
GRANTS Total	\$0	\$240,384	\$240,000			\$480,384
USEWS Section 6		\$240,384	\$240,000			\$480,384
Balance to Share	\$60,000	\$652,949	\$593,333	\$533,334	\$400,000	\$2,179,616
Santa Clara County						
HCP/NCCP Program Manager Credit	\$0	\$100,000	\$100,000	\$100,000	\$100,000	
Contract-In Credit						
Total County Funding	\$0	\$136,226	\$136,226	\$136,226	\$136,226	\$544,904
City of San Jose	FY02/03					
MOU Facilitator Contract Credit	\$10,000					
Contract-In Credit						
Total City Funding	\$10,000	\$133,726	\$133,726	\$133,726	\$133,726	\$544,904
Water District	FY03/04					
MacIec Contract Credit	\$50,000					
Contract-In Credit						
Total District Funding	\$50,000	\$123,726	\$123,726	\$123,726	\$123,726	\$544,904
MTA						
Contract-In Credit						
Total Agency Funding	\$0	\$136,226	\$136,226	\$136,226	\$136,226	\$544,904
HCP/NCCP Partner Funding						
TOTAL	\$60,000	\$770,288	\$769,904	\$529,904	\$529,904	\$2,660,000